

that, after he and Thangavelu had had the row over Thangavelu not being permitted to go on to the Pier with the brief case, Thangavelu handed the brief case to a porter named Mustapha to look after while he went on to the wharf. The learned President in his grounds of judgment said he could give no weight to the appellant's reference to this Mustapha without the presence of Mustapha himself, "a porter", the learned President said, "whose whereabouts, the 1st accused says, is yet not known . . .". But the defence called a witness, D.W. 1, to say that he knew a porter named Mustapha who had gone to India and that Mustapha had told him that "he had an important case and so he had to go". This witness was not challenged by the prosecution. What more could the appellant do? It is not an unreasonable inference to draw that Mustapha had gone to India in order to avoid getting mixed up in this case.

The grounds of judgment dealing with the evidence of D.W.2, a Customs Officer, a witness for the prosecution who was not called by them, but was called by the defence, call for comment in two respects. First, the learned President said that D.W.2 could not be believed when he said that declarations were made at the Customs Shed at Swettenham Pier, whereas in fact all declarations according to P.W.9, a more senior Customs Officer, were made not at the Pier but at Customs Headquarters. It does not appear to have occurred to the learned President (what I would have thought was a matter of common knowledge and which was conceded by the learned Deputy) that there are two types of declarations, written and verbal. Written declarations can only be made between certain times at Customs Headquarters, while verbal declarations made by the individual owner accompanying his own goods can be made at the Pier at any time. Second, he said that "from the whole evidence of this witness (D.W.2) I find he did not make such a detailed check of the things in the Customs Shed to know anything about the handbag (brief case) (Exhibit P.3) as he professed when he took over duty at 4.00 p.m.". Now the prosecution had tried to discredit this witness by using his statement to the police but the learned President refused to let them do so. This statement had been made to the police on the 13th May, 1961, which was two days after the incident had taken place, and must have been substantially similar to his evidence in Court or the learned President would have allowed its use to discredit the witness. The witness was therefore at least consistent and there was really no justification for disbelieving him, although he may have been mistaken as he himself admitted.

There were originally two accused persons but one of them had been acquitted at the close of the prosecution case. Now Palaniandy had made a most damning allegation against the 2nd accused which, if believed, was quite sufficient on its own to justify his being called upon for his defence. If P.W.6 could not be

A believed in relation to the 2nd accused why should he be believed in relation to the appellant?

Prosecution witness Suppiah had telephoned to the Deputy Chief Police Officer and given him certain information and later had telephoned him a second time. In his evidence the Deputy Chief Police Officer (P.W.4) omitted to make any mention of Suppiah having said the first time he telephoned that a demand had been made for \$500, until right at the end of his examination-in-chief. After the first of such telephone calls P.W.4 took no further action, having told Suppiah to tell his friends to make a report. It was only after Suppiah had telephoned a second time some 2 hours later that P.W.4 instructed, amongst others, Inspector Lim (P.W.14) to take action. I think it most unlikely that an experienced police officer like P.W.4 would do nothing after having been informed of a complaint of demand by a Government servant for \$500. It occurs to me that P.W.4 might have been mistaken when he said he was informed of the demand for \$500 on the first telephone call, and it might well have been in fact that he was not so informed until the second telephone call. This would have tended to support the appellant's story that he was being put in trouble.

E I was in agreement with Mr. Jag-Jit Singh's assessment of the evidence when he said "The whole story has not come out".

I accordingly allowed the appeal and quashed the conviction and sentence.

Appeal allowed.

Re ABDUL AZIZ'S APPLICATION

[O.C.J. (Rose C.J.) December 1, 1961]

[Singapore — Summons in Chambers No. 1139 of 1961 in O.M. No. 36 of 1961; Summons in Chambers No. 1140 of 1961 in O.M. No. 37 of 1961]

Contempt of Court — Application for attachment for criminal contempt relating to proceedings in an inferior Court — Procedure applicable — Singapore R.S.C. Preliminary r.2 — Whether English Order 59 rr.3, 6 and 26 apply — If applicable whether obligatory — Effect of non-compliance — Leave of State Advocate-General.

H The applicant commenced proceedings by originating motions for orders nisi that the two respondents do show cause why writs of attachment should not issue respectively against them for what was alleged to be contempt of Court in their respectively publishing a statement allegedly relating to a case then pending in a Criminal District Court and in which the applicant was an accused person. The proceedings were intitled, *inter alia*, "In the Matter of the Courts Ordinance, section 11(1) and Order XLII r.1" (i.e. of the Rules of the Supreme Court, Singapore) and a form of procedure purportedly governed by this rule was followed. Having issued the originating motions the applicant applied *ex parte* to a Judge in Chambers for leave to serve the respective notices of motion. The respondents entered conditional appearance and applied by Summonses in Chambers to set aside the respective notices of motion and all subsequent proceedings on the grounds of various procedural defects.

I The grounds of the application were similar and were as follows:—

" (a) That the said Notice of Motion does not recite that the application is moved pursuant to the leave of this Honourable Court and was in fact issued without such leave contrary to the provisions of the Rules of the Supreme Court, Preliminary Rules, Rule 2 and of the Rules of the Supreme Court of England, Order 59 rules 3 and 26.

(b) That no Statement accompanying an application for such leave aforesaid has been served with the said Notice of Motion as required by the said Order 59 rules 6 and 26.

(c) That the said Notice of Motion is not an application for leave to issue a Writ of Attachment and in so far as it seeks an Order *Nisi* is in breach of Order 49 rule 3(1) of the Rules of the Supreme Court.

(d) That the said Notice of Motion is not endorsed with either the address of the applicant or with an address for service contrary to the provisions of Order 4 rule 1 of the Rules of the Supreme Court which requires the endorsement of both said addresses."

The respondents contended that while Order XLII rule 1 governs cases where the respondent is alleged to be in contempt by reason of disobedience of an order of the High Court there was no specific provision in the Singapore R.S.C. for attachment for criminal contempt alleged in respect of proceedings in an inferior Court and therefore by virtue of Preliminary Rule 2 of the Singapore R.S.C. the English procedure should be applicable. In substance, the ground of the respondents' applications was that the English procedure was obligatory in proceedings like the present and that the applicant's procedure was not in compliance with English R.S.C. Order 59 rule 26 and rules 3 and 6 of that Order and that the entire proceedings were therefore a nullity.

Held: (1) there being no provision in the Singapore R.S.C. relating to criminal contempt the practice, procedure and forms for the time being in force in England are applicable in Singapore by reason of Preliminary Rule 2 of the Singapore R.S.C.;

(2) in England compliance with Order 59 rule 26 is obligatory where the contempt is alleged to be committed in connection with proceedings in an inferior Court and compliance with this English Order is similarly obligatory in Singapore;

(3) while contempt of Court is an offence *sui generis* it has long been regarded as a criminal matter and as it affects the liberty of the subject the procedure applicable must be followed strictly;

(4) in proceedings such as the present failure to obtain leave under English Order 59 rule 3 which is made applicable to applications for attachment for contempt by rule 26 of that Order is a defect which cannot be cured;

(5) *obiter*, leave of the State Advocate-General is not an essential preliminary for the institution of contempt proceedings.

Cases referred to:—

- (1) *O'Shea v. O'Shea and Parnell* (1890) 15 P.D. 64 at 65.
- (2) *King v. Parke* [1903] 2 K.B. 441.
- (3) *R. v. Bairstow* [1941] W.N. 104.
- (4) *R. v. Duffy & Ors.* [1960] 2 Q.B. 188 at 192.

SUMMONS IN CHAMBERS (adjourned into open Court).

S. H. D. Elias for the applicant.

G. Starforth Hill for Lee Kuan Yew (respondent in O.M. No. 36 of 1961).

R. H. Green and P. Coomaraswamy for Straits Times Press (Malaya) Ltd. (respondent in O.M. No. 37 of 1961).

T. S. Sinnathuray (Crown Counsel) appeared as *amicus curiae*.

Cur. Adv. Vult.

Rose C.J.: For reasons of convenience and with the consent of the parties these two applications have been heard together, the matters to be determined being identical.

The applications are that the Notices of Motion in the two matters should be set aside on the grounds that certain essential procedures have not been followed.

It would seem to be clear that while contempt of court is an offence *sui generis* it has long been regarded as a criminal matter. The observations of Lindley L.J. and Lopes L.J. in *O'Shea v. O'Shea and Parnell*,⁽¹⁾ at pages 64 and 65 are in point. As also is an observation of Wills J. in the *King v. Parke*⁽²⁾ at page 441 where he says that procedure in matters pending on the civil side "would afford no assistance in the present discussion". By this he must clearly be taken to have meant that contempt of court falls on the criminal side of the jurisdiction.

That being so, it would follow that the long standing rule requiring the utmost strictness of procedure in matters affecting the liberty of the subject is applicable.

This aspect of the matter is stressed in the Third Edition of Mr. Oswald's book on *Contempt of Court* at pages 17 and 210 which was published as long ago as 1910 but should still be treated with respect.

Mr. Hill, who appeared on behalf of Mr. Lee Kuan Yew, contends that there is a fundamental and incurable defect in the procedure adopted by the applicant in his application for leave to issue a Writ of Attachment in that no leave was granted, or even applied for, under Order 59 Rule 3 of the (English) Rules of the Supreme Court which he contends is the appropriate rule in contempt matters in Singapore.

Rule 26 (1) of Order 59 reads:—

"26.—(1) The procedure in applications for attachment for contempt of Court in the cases to which this Rule applies shall be the same as in applications for an order of mandamus and Rules 3, 5, 6 and 7 of this Order shall apply accordingly to applications for attachment, so far as they are applicable;"

Sub-rule (2) of Rule 26 provides that the Rule is applicable to cases where the contempt is committed in connection with proceedings in an inferior Court.

Mr. Elias, who appears for the respondent in both these applications, contends *inter alia* that even if Order 59 applies to contempt matters in Singapore, which he does not concede, compliance with the Order, although convenient, is not obligatory. He relies for this contention on *Rex v. Bairstow*⁽³⁾ which is referred to, under the heading "Practice Note", in 1941 Weekly Notes at page 104. Humphreys J., who gave the Judgment of the Court, stated that, while he agreed that the most convenient course was to follow the recent suggestion of the then Lord Chief Justice that Order 59 Rule 26 should be applied, nevertheless an alternative and less formal method was not excluded.

It is to be noted, however, that this case which is referred to briefly in the 1961 edition of the *White Book* at page 1077 relates to contempt by way of scandalising an inferior Court. It has never been cited as authority for proceedings relating to contempt by a person who is alleged to have interfered, or attempted to interfere, with judicial proceedings in an inferior Court; and I do not consider that it is of assistance in the present matter.

While it is no doubt the case that contempts committed in the face of the Court may be dealt with forthwith without any special formalities, and conceding that the *Bairstow case* is authority for the proposition that in any contempt arising from the scandalising of the Court alternative procedures are permissible, I am satisfied that, as far as England is concerned, compliance with Order 59 Rule 26 is obligatory in such matters as are presently under consideration.

It is therefore necessary to consider first whether, assuming the English practice to be applicable, the relevant Rule has been complied with. Rule 3 (1) of Order 59, which is declared to be applicable to applications for attachment for contempt by Rule 26 (1), states that no such application shall be made unless leave has been granted. In the present matters it is conceded that no such leave has been granted, or indeed applied for. It is true that subsequent to the filing of the application, a further application was made *ex parte* to a Judge in Chambers for leave to serve. If, however, the application which was originally filed is itself null and void by reason of the failure to comply with Rule 3 (1), I agree with what Mr. Hill in effect contended that the *ex parte* Order by the learned Judge in Chambers cannot give life to an application that has never been born.

Complaint is also made that no statement, as required by Rule 6 of Order 59, accompanying the application for leave has been served with the Notice of the Motion. This point seems to me to be subsidiary to the principal point, as no application for leave having been made it would naturally follow that none of the documents which should rightly accompany such application for leave have been served, or indeed even exist.

It is further contended that the form of the Motion offends against Order XLIX Rule 3 of the (Singapore) Rules of the Supreme Court; and that the said Notices of Motion have no address for service endorsed thereon contrary to Order IV Rule 1.

The latter is eminently curable and need not detain us further; and, be the former as it may, it seems to me that the primary matter that I have to decide, assuming that the English practice is applicable, is whether the failure to obtain leave is an irregularity which can be cured or a fatal defect which renders the applications null and void.

I have no hesitation in coming to the conclusion that such a failure is fatal and cannot

subsequently be cured. Indeed, Mr. Elias did not, if I understood him rightly, seriously contend to the contrary, his main contention being that Order 59 Rule 26 did not apply at all to contempt matters in Singapore and that no particular formality is required here for the reason that no procedural provisions exist in regard to that field of the law.

This contention requires consideration. Preliminary Rule 2 of the Rules of the Supreme Court 1934 provides that:—

"2. — Where no provision for procedure is made or no appropriate form is provided by these Orders and Rules or by any law in force in the State, the procedure and practice and forms for the time being in force or use in the Supreme Court of Judicature in England shall, as near as may be, be followed and adopted."

It is to be noted that the law to be followed and adopted is the law for the time being in force or use in the Supreme Court of Judicature. These words, in my opinion, clearly exclude the view that the law to be followed and adopted is the law in force at the time of the coming into force of the Rules, the relevant law, in my opinion, being that prevailing in England at the time when the particular matter in issue comes to be determined.

Mr. Elias submitted that as contempt matters are, in effect, criminal matters, the (Singapore) Rules of the Supreme Court have no application and he cited in support the fact that the original version of the Supreme Court Rules is headed "Civil Procedure Rules of the Supreme Court 1934". He added that there was no authority for the change of the title to "Rules of the Supreme Court 1934", as it appears in the *Straits Settlements Practice*.

However, immediately following the heading "Civil Procedure Rules" it is stated that the following Orders and Rules may be cited as "The Rules of the Supreme Court, 1934". Apart from that, with all respect to learned counsel, I am not impressed by the force of the argument. In England, as has been stated in the authorities that I have quoted, contempt matters have always been regarded as criminal, or at least as quasi-criminal, matters. Yet for procedural provisions concerning them the Rules of the Supreme Court have been chosen as the appropriate place. For that reason I prefer to adopt the view that in Singapore also the appropriate place for such procedural provisions is the Rules of the Supreme Court. And I do not consider that the original heading of the Rules is a bar to the adoption of that view. That being so, there being in our law no other positive provisions relating to contempt, Preliminary Rule 2 is, in my opinion, our guide in this particular field whereby the English practice in matters of contempt is incorporated in our law.

I would observe in passing that Order XLII Rule 1 of the (Singapore) Rules of the Supreme Court, which is identical with Order 44 Rule 2 of the (English) Rules of the Supreme Court, would seem to have no application to the present

matters, which are criminal or quasi-criminal in their nature.

Apart from all these considerations, the adoption of Mr. Elias's contention would mean the acceptance that there is in Singapore no provision of any kind as to the procedure to be adopted in contempt matters. That is a conclusion that would seem to be highly inconvenient in practice and, for that reason alone, should only be arrived at with the greatest reluctance.

For the reasons that I have given I have come to the conclusion that the failure to obtain leave is a fatal bar. I would add that I share the reluctance which nowadays most Judges feel in deciding important questions of substance on points of procedure. The days of rigid formalism are long past, but at any rate in matters affecting the liberty of the subject there is an essential minimum of form which must be observed. Otherwise confusion and uncertainty would inevitably result, and it is to avoid such confusion and uncertainty that Rules such as the English Rule 26 of Order 59 are devised.

Although the matter was not pressed in argument I should perhaps say a word about Mr. Hill's and Mr. Sinnathuray's contention that leave of the State Advocate-General was not obtained for the institution of these contempt proceedings, and that such leave is an essential preliminary.

Some guidance in this matter may be obtained from the arguments adduced by Sir Reginald Manningham-Buller, the English Attorney-General, in *Regina v. Duffy and Others*.⁽⁴⁾ The matter is not dealt with in the judgment of the Court but at page 192 the Attorney-General's arguments are summarised. It is interesting to note that he puts the position no higher than that it has been the usual practice in recent years for persons complaining of contempt to make an informal approach to the Attorney-General. Indeed the convenience of such a course is obvious as in the great majority of such cases the matter would be taken over by the Attorney-General's Department. Sir Reginald Manningham-Buller, however, does not suggest that, an approach having been made and an intimation having been received from the Attorney-General that he does not propose himself to move in the matter, the door is closed to a complainant who is aggrieved, or imagines himself to be so.

I respectfully agree with the position as stated by the Attorney-General in England. Indeed the wisdom of the practice as so formulated is apparent upon consideration. It is true that in the great majority of cases an Attorney-General may say aye or nay without incurring the suspicion, however unjustified, that he is judging in his own cause. The position, however, might well be different if the alleged contempt was committed by a senior member of Government to which the Attorney-General himself belongs and to which he might therefore

be considered by uncharitably minded persons to be obligated. In such a case the Attorney-General himself would no doubt wish to be relieved of the embarrassment of having to make an administrative decision the motives of which might well be misunderstood. One of the most effective ways to protect a person from criticism of a refusal on his part is to withhold from him the power to refuse. And that is precisely what the English practice has done.

I would add that I am satisfied from a perusal of the correspondence between Mr. David Marshall, then counsel for the respondent, and a member of the State Advocate-General's Department that an appropriate informal approach was made within the meaning of the Rule to which the English Attorney-General referred.

It would seem to be unnecessary for me to add that the matters that were argued before me are in the nature of a preliminary objection and that the decision that I have come to does not in any way operate as a bar to the principal matters being pursued through the correct procedure, should the respondent in the present proceedings still feel that they require ventilation.

In the result the Notices of Motion are set aside.

Order:— The costs of and incidental to the respondents' applications and of and incidental to the applicant's motion including the costs reserved be taxed on the lower scale and paid by the applicant to respondents.

Notices of Motion set aside.

Solicitors: *Marshall & Chung; Lee & Lee; Braddell Bros.*

NG KONG YUE & ANOR. v. REGINA

[A. Cr. J. (Chua J.) December 1, 1961]

[Singapore — Magistrate's Appeal No. 275 of 1960]

Bribery and Corruption — Prevention of Corruption Ordinance (Cap. 121), s.3(b) and Penal Code, s.34 — Appellants in contractual relations with War Department — Corrupt payment to War Department servant — Written contract not produced — Effect of failure to prove contract — Prevention of Corruption Ordinance, ss.4 and 5.

Evidence Ordinance, ss.64, 92 — Whether oral evidence admissible to prove existence of contract.

Appellants were convicted in the District Court of an offence under section 3(b) Prevention of Corruption Ordinance and under section 34 of the Penal Code in that they had on June 15, 1960 corruptly given the sum of \$200 to a servant of the War Department as an inducement for showing favour in relation to his principal's affairs.

There was a written contract for the period 1.4.60 to 31.3.61 between the War Department and Sin Sin Furniture Co. of which the appellants were representatives and oral evidence was given of this contract and the period over which it subsisted. One of the grounds of appeal was that oral evidence of the contract was inadmissible and that the document itself should have been produced.

It was argued for the prosecution that there was no necessity to prove any of the terms of the contract;